

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

LEO A. MADDEN, Ancillary Receiver of Piggly  
Wiggly Yuma Company, a corporation,  
Appellant,

vs.

MORRIS LaCOFSKE,  
Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United  
States for the District of Arizona.

FILED

JAN - 6 1934

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

LEO A. MADDEN, Ancillary Receiver of Piggly  
Wiggly Yuma Company, a corporation,  
Appellant,

vs.

MORRIS LaCOFSKE,  
Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United  
States for the District of Arizona.



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Appeal:	
Assignment of Errors.....	42
Bond on.....	46
Citation on.....	53
Order Allowing.....	45
Order extending time to docket record and perfect .....	51
Order extending time for filing transcript of record on.....	50
Petition for.....	41
Praeceptum for Transcript of Record on.....	49
Attorneys of Record.....	1
Clerk's Certificate .....	52
Decree .....	38
Order for .....	29
Findings of Fact and Conclusions of Law.....	30
Order for Decree.....	29

	Page
Petition for Order Authorizing Sale of Property .....	1
Order thereon.....	7
Petition of Leah Goldsmith, Lien Creditor and Claimant for order directing receiver to pay accrued rent and cost of repairs.....	8
Stipulation Submitting Claimant's Petition on Briefs to be Filed.....	27

ATTORNEYS OF RECORD

TOWNSEND, JENCKES and EDWARDS,  
Luhrs Tower, Phoenix, Arizona,  
Attorneys for Appellant.

MARKS and MARKS,  
Title and Trust Building, Phoenix, Arizona,  
Attorneys for Appellee. [3\*]

---

In the United States District Court in and for the  
District of Arizona.

In Equity  
No. E-244—Phoenix

CRAMER'S BAKERY, INC., LTD., a corpora-  
tion; IMPERIAL VALLEY MILK PRO-  
DUCERS ASSOCIATION, a corporation;  
VALLEY WHOLESALE MEAT COMPANY,  
a corporation; and HAROLD W. HERLIHY,  
as Receiver of U-SAVE HOLDING CORPO-  
RATION, a corporation,

Complainants,

vs.

PIGGLY WIGGLY YUMA COMPANY, a cor-  
poration,

Defendant.

PETITION FOR ORDER AUTHORIZING  
SALE OF PROPERTY.

The petition of Leo A. Madden respectfully  
shows:

---

\*Page numbering appearing at the foot of page of original certified  
Transcript of Record.

## I.

Your petitioner was, on the 12th day of March, 1932, duly appointed Receiver of Piggly Wiggly Yuma Company, a corporation, by the United States District Court for the Southern District of California, in an action therein pending, wherein the above named complainants were the petitioners and the Piggly Wiggly Yuma Company, a corporation, was defendant; that on the same day your petitioner qualified as said Receiver, and ever since has been, and now is, the duly appointed, acting and qualified Receiver of said corporation.

## II.

Thereafter and on the 14th day of March, 1932, your petitioner was appointed Ancillary Receiver, by the United States District Court in and for the District of Arizona, in the above entitled cause; that your petitioner forthwith qualified, and ever since has been, and now is, the duly appointed, acting and qualified Receiver of said defendant corporation.

## III.

That said defendant corporation is the owner of the fixtures and the stock of merchandise in the store located at 258-260 Main Street, Yuma, Arizona, known as "Piggly Wiggly Store No. 1," and that your petitioner, ever since the date of his appointment and qualification herein, has been, and now is, operating and conducting said store; that



the premises upon which [4] said store is situated, are covered by two leases, expiring February 18th, 1934, and October 6th, 1934, respectively, and that the combined monthly rental due under the terms of said leases is \$350.00 per month.

#### IV.

That at the time of the appointment of your Receiver herein, the defendant Piggly Wiggly Yuma Company was operating seven stores, and that all of said stores have been disposed of except a store at Brawley, California, and the said Yuma store. Your Receiver is making every effort to dispose of said Brawley store, and to wind up the affairs of this receivership.

#### V.

That since his appointment as Receiver, your petitioner has at all times been and is now operating said Yuma store at a loss, and that it is for the best interest of the creditors and stockholders of said Piggly Wiggly Yuma Company that said store be disposed of at the earliest possible date. That the United States District Court in and for the Southern District of California has heretofore authorized your petitioner to sell all of the defendant's stores in block, but that your petitioner was unable to secure a bid for them in such block, and has been compelled to sell them out as individual stores.

## VI.

That since July 1, 1932, your petitioner has exhausted every possible means to find a purchaser for said Yuma store, and has been able to obtain only one bid for the stock of merchandise and fixtures of said store. That Herman J. Schwartz and Jessie E. Schwartz, of Yuma, Arizona, have made such bid, and the same is attached hereto, and marked "Exhibit 'A' ". That said bid is for the sum of \$2250.00 cash, lawful money of the United States, and was accompanied by a check to your petitioner in that amount. That the sum offered is not disproportionate to the value of said fixtures and the stock of merchandise.

That under the laws of the state of Arizona, your petitioner is informed and believes, and therefore alleges, that the landlord has a lien on all of said stock of merchandise and fixtures, for the unearned rent still to [5] accrue under the terms of the said leases. That the amount of rent to accrue under said leases far exceeds the value of said fixtures and stock of merchandise. That under the terms of said leases your petitioner has a right to assign the leasehold interest of the defendant, and that said bidders have agreed to accept such assignment.

## VII.

That unless said offer is accepted, your petitioner verily believes and so alleges, that it will be necessary to dispose of the stock of said store by sale over the counter, and that such sale would be un-

desirable and unprofitable, for the reason that one of the chief factors in the loss incurred by your petitioner in operating said business was the heavy rental provided for by said leases. That if said offer is not accepted and it proves inadvisable for your petitioner to further continue the operation of said business, then and in such event the only alternative remaining to your petitioner would be to abandon said store to said landlord.

WHEREFORE, petitioner prays that the Honorable Court enter an order herein, without notice, authorizing said petitioner to accept said offer and to consummate said sale, and assign said leases.

Dated this 22nd day of November, 1932.

LEO A. MADDEN,  
Receiver of the Piggly Wiggly  
Yuma Company, a corporation.

FRED BLAIR TOWNSEND,  
C. A. EDWARDS,  
CHAS. B. WARD,  
Attorneys for Receiver.

State of Arizona,  
County of Maricopa.—ss.

C. A. EDWARDS, being duly sworn, on oath deposes and says: That he is one of the attorneys for Leo A. Madden, Receiver of the Piggly Wiggly Yuma Company, a corporation, defendant in the above entitled action, and that as such attorney he is acquainted with the facts contained in the fore-

going petition; that said petition is true of his own knowledge except as to those matters therein stated [6] upon his information and belief and as to those matters that he believes it to be true.

C. A. EDWARDS,

Subscribed and sworn to before me this 22nd day of November, 1932.

(Seal) FRED BLAIR TOWNSEND,  
Notary Public in and for the County of Maricopa,  
State of Arizona. My Com Exp 2/16/36. [7]

---

EXHIBIT "A"

November 15, 1932.

Mr. Leo A. Madden,  
Federal Receiver in Equity for  
Piggly Wiggly Yuma Company,  
El Centro, California.

Dear Sir:

We hereby offer you the sum of Twenty-two Hundred and Fifty (\$2250.00) dollars for the Piggly Wiggly Yuma Store at 258-260 Main Street, Yuma, Arizona, including all stock and fixtures.

HERMAN J. SCHWARTZ

JESSIE E. SCHWARTZ

The foregoing bid is hereby accepted according to the terms thereof, subject to the approval of the

United States District Court and I hereby acknowledge receipt of said personal check.

LEO A. MADDEN

Leo A. Madden, Federal Receiver  
in Equity for Piggly Wiggly  
Yuma Co.

[Endorsed]: Filed Nov. 23, 1932. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk. [8]

---

[Title of Court and Cause.]

ORDER AUTHORIZING SALE OF  
PROPERTY

The petition of LEO A. MADDEN, Ancillary Receiver herein, for an order for the sale of the fixtures and stock of merchandise located in the PIGGLY WIGGLY STORE No. 1, at 258-260 Main Street, Yuma, Arizona, and for assignment of the leasehold interest in said premises, came on regularly to be heard this day, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said petition be and the same hereby is granted, and that said LEO A. MADDEN, Receiver, be and he hereby is authorized and instructed to sell at private sale, without notice, all of his right, title and interest as Receiver, and all the right, title and interest of PIGGLY WIGGLY YUMA COMPANY, a cor-

poration, defendant herein, in and to said fixtures and stock of merchandise, and assign all of said right, title and interest in and to said leasehold interest, for the sum of \$2250.00; and said sale and assignment shall be final.

DATED THIS 23rd day of November, 1932.

F. C. JACOBS,

District Judge.

[Endorsed]: Filed Nov. 23, 1932. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk. [9]

---

[Title of Court and Cause.]

PETITION OF LEAH GOLDSMITH, LIEN  
CREDITOR AND CLAIMANT, FOR OR-  
DER DIRECTING RECEIVER TO PAY  
ACCRUED RENT AND COSTS OF RE-  
PAIRS.

Comes now Morris LaCofske, by his attorney-in-fact, LEAH GOLDSMITH, represented by Marks & Marks, her attorneys, and respectfully shows to the Court:

I.

That in the above-entitled court and cause, on the 14th day of March, 1932, Leo A. Madden was duly appointed ancillary receiver of the Piggly Wiggly Yuma Company, a corporation, on the petition of the above-named plaintiffs; that in the Order of Appointment said Leo A. Madden was

required to execute a bond in the sum of \$10,000.00; that on the 16th day of March, 1932, he did present and file his bond in said sum with the American Surety Company of New York, as surety; that said Surety Company is duly qualified to execute fiduciary bonds in the state and federal courts of the State of Arizona; that said bond was approved by the Judge of the above-entitled court on the 21st day of March, 1932. That thereupon said Leo A. Madden entered upon his duties as receiver of the above-entitled defendant corporation, and ever since has been, and now is, the duly qualified and legally acting receiver of said defendant.

## II.

That among the assets which the said Leo A. Madden took possession [10] of as receiver of said Piggly Wiggly Yuma Company was a grocery business carried on by said Company in Yuma, Yuma County, Arizona, in a store building owned by said Morris LaCofske, which premises are described as:

“North Eighteen (N18) feet six inches (6”) of Part F of Lot Eight (8), Block Fourteen (14), and the South Half (S1½) of the Pancrazi Building on Unit F of Lot Eight (8), Block Fourteen (14), of the City of Yuma,”

which real estate was improved with a large store building, in which said grocery business, consisting of a large stock of merchandise and fixtures and equipment, was carried on.

## III.

That at the time the said receiver, Leo A. Madden, took possession of said grocery business as an asset of said estate, there was in full force and effect two certain leases between the said Morris LaCofske and said Piggly Wiggly Yuma Company, a corporation, under which leases the said Piggly Wiggly Yuma Company was occupying said premises.

That the first of said leases was entered into in writing on the 18th day of February, 1924, by and between A. T. Pancrazi and Catherine Pancrazi, husband and wife, as lessors, and the Piggly Wiggly Yuma Company, a corporation, as lessee, and covered the North 18' 6" of Part F of Lot 8, Block 14, of the City of Yuma, together with a building to be erected thereon, and was and is for a period of ten years from the date of occupancy, and the said lease providing for rent to be paid by lessee for the first five years at \$150.00 per month and for the second five years at \$175.00 per month, said rent being made payable monthly in advance.

That in said lease the lessee agreed among other things:

## Paragraph C:

“To keep the interior of the premises in good order and condition, and surrender the same at the expiration of the term of this lease in like good order and condition as when taking possession thereof, ordinary wear and tear and



casualties by fire, the elements acts of God, or the public enemies along excepted.”

That it is further agreed in said lease as follows:

“And it is agreed that the lessee shall have the right to assign or transfer this lease, or under-lease, or [11] sublet a portion or the whole of said premises, provided that this shall not prejudice or effect any covenant or agreement of this lease, as aforesaid, it shall remain liable to the said lessors for full payment of the rent the same as if such assignment had not been made.

“It is further mutually understood and agreed by and between the parties hereto that the terms of this lease is binding upon the heirs, executors, administrators and assigns of all parties, and that no waiver of any breach or of any covenant herein shall be construed as a waiver of the covenant itself or of any subsequent breach thereof.”

That on November 28, 1924, the lessors named in said lease sold and conveyed all their right, title and interest in and to said lease above mentioned, and the rents and profits to be derived therefrom, to said Morris LaCofske, and the said Piggly Wiggly Yuma Company, in writing, on the same date, acknowledged notice of the transfer of said lease, and in writing recognized said Morris LaCofske as the new landlord of the premises described in said lease.

## IV.

That the second of said leases above referred to, was entered into in writing on the 6th day of October, 1924, by and between A. T. Pancrazi and Catherine Pancrazi, husband and wife, as lessors, and Piggly Wiggly Yuma Company, a corporation, as lessee, and covered the South Half of the Pancrazi Building on Unit F of Lot 8, Block 14 of the City of Yuma, and was and is for a period of ten years from said date of lease, providing for rent to be paid by the lessee for the first year at a monthly rental of \$125.00 a month, for the next four years at \$150.00 per month, and the last five years of said lease at \$175.00 per month, payable in advance.

That on November 28, 1924, the Lessors named in said lease sold and conveyed all their right, title and interest in and to said lease above mentioned, and the rents and profits to be derived therefrom, to said Morris LaCofske, and the said Piggly Wiggly Yuma Company, in writing, on the same date, acknowledged notice of the transfer of said lease, and in writing recognized said Morris LaCofske as the new landlord of the premises described in said lease. [12]

## V.

That ever since November 28, 1924, the said Morris LaCofske has been, and now is, the owner of the premises described in said leases, and ever since said date he was, and now is, the owner of said leases above described.

VI.

That after said Leo A. Madden was appointed receiver as aforesaid, he continued to occupy said leased premises as aforesaid, and continued to operate said grocery business in said leased premises as aforesaid, and said receiver paid the rent due under said leases from time to time to said owner up to and including the 15th day of November, 1932.

VII.

That on or about May 2, 1932, the said Morris LaCofske, through his attorney, C. A. Lindeman, filed his claim for rents, and his claim arising under Paragraph C above set out, due him and to become due him under said leases aforesaid with the said Leo A. Madden, receiver aforesaid, said claim being in words and figures as follows:

“IN THE UNITED STATES DISTRICT  
COURT, DISTRICT OF ARIZONA,  
NORTHERN DIVISION.

No. ....

“Cramer’s Bakery, Inc., Ltd., et al.,  
Plaintiffs,

vs.

Piggly-Wiggly Yuma Co., a corporation,  
Defendant.

CLAIM OF MORRIS LaCOFSKE FOR  
RENT.

“TO LEO A. MADDEN, FEDERAL RE-  
CEIVER IN EQUITY, PIGGLY-WIGGLY

YUMA CO., Room 3, 110 North Sixth Street,  
El Centro, California:

“The undersigned MORRIS LaCOFSKE hereby presents his claim against Piggly-Wiggly Yuma Co. for the rental of two store rooms at Yuma, Arizona, under the following leases, copies of which are attached hereto and made a part hereof:

(1) Lease dated February 18, 1924, effective for ten (10) years from June 1, 1924, from A. T. Pancrazi et ux as lessors, which lease was [13] assigned by said lessors to the claimant herein on November 28, 1924, for the store building on the North Eighteen (N18) feet six inches (6') of Part F of Lot Eight (8), Block Fourteen (14) of said City of Yuma.

“(2) Lease dated October 6, 1924, effective ten (10) years from said date from said A. T. Pancrazi et ux as lessors, which lease was assigned by said lessors to the claimant herein on November 28, 1924, covering the South Half (S1/2) of the store building on said unit F of Lot 8 aforesaid.

“The amounts claimed thereunder are as follows:

Rent unpaid by said Piggly-Wiggly Yuma Co. under the aforesaid lease numbered (1) from February 1, 1932, to March 13, 1932, inclusive, one and 13/31 months at \$175.00 per month.....\$ 248.39

“Rent unpaid by said Piggly-Wiggly Yuma Co. under the afore-

said lease numbered (2) from February 1, 1932, to March 13, 1932, inclusive, one and 13/31 months at \$175.00 per month ..... 248.39

“Rent for the unexpired portion of the aforesaid lease numbered (1) from March 13, 1932, to June 1, 1934, being two years, two months and seventeen days at \$175.00 per month..... 4649.17

“Rent for the unexpired portion of the aforesaid lease numbered (2) from March 13, 1932, to October 6, 1934, being two years, six months and twenty-three days at \$175.00 per month ..... 5384.17

“Estimated cost of removing present temporary partitions upon termination of the aforesaid leases and restoring said building to the same condition in which it was delivered to lessee ..... 965.00

“Estimated cost of restoring electric wiring at termination of leases to the condition in which it was delivered to lessee ..... 155.05

---

“Total .....\$11,650.17

“Less credits as follows:

“Paid by Receiver for rent accrued during his occupancy of the aforesaid premises:

“March 14 to 31, 1932, 18/31 months at \$350.00 .....	\$203.22	
“April 1 to 30, 1932.....	350.00	
		_____
“Total Credits .....	\$553.22	553.22
		_____
“NET BALANCE DUE .....	\$11,096.95	

“The undersigned claims the landlord’s lien given by the laws of the State of Arizona upon all of the lessee’s merchandise, fixtures, furniture and all other personal property upon said leased premises to secure the payment of [14] the rent for the full term of said leases, as well as to secure the performance of all of the terms of said leases, including the cost of restoring the same at the termination thereof to the same condition in which they were received by the lessee.

“Dated at Los Angeles, California, April 30, 1932.

(Signed) Morris LaCofske,  
Claimant.

“C. A. Lindeman,  
Attorney for Claimant.

“State of California,  
County of Los Angeles.—ss.

“Morris LaCofske, being first duly sworn, deposes and says, that he is the claimant above named; that he has read the foregoing claim and knows the contents thereof, and that the same is true of his own knowledge in substance

and in fact; that the amount claimed therein is justly due him from Piggly-Wiggly Yuma Co., a corporation, and that there are no offsets or counter-claims thereto for which credit has not been given therein.

(Signed) Morris LaCofske

“Subscribed and sworn to before me this  
..... day of ....., 1932.

.....  
Notary Public in and for said County and  
State. (Seal)”

VIII.

Claimant avers that the provisions of Paragraph 3671 Revised Statutes of Arizona, Civil Code, 1913, were in effect when said leases aforesaid were entered into as aforesaid, and reads and provides as follows:

“Every landlord shall have a lien on all the property of his tenant not exempt by law, placed upon or used on the leased premises until his rent shall be paid, and such landlord, his agent, or attorney, may seize, for rent, any personal property of his tenant that may be found on the premises or in the county where such tenant shall reside, but no property of any other person, although the same may be found on the premises, shall be liable for seizure for rent due from such tenant, and in case of failure of the tenant to allow the landlord, his agent or attorney to take possession of such property for the payment of rent, said landlord

shall have the right to reduce such property to his possession by action against the tenant to recover the possession of the same, and may hold or sell the same for the purpose of paying said rent unless said rent shall be paid before sale, \* \* \* and also for the faithful performance of the terms of the lease, and such lien shall continue for a period of six months after the expiration of the term for which the premises were leased, and, in all cases where the demised premises shall be let or lease assigned, the landlord shall have the same right to enforce his lien against the sub-lessee or assignee as he has against the tenant to whom the premises were leased." [15]

That said provision continued in effect during the term of said leases, and the provisions of said Paragraph 3671 aforesaid is now known as Paragraph 1958, Revised Code of Arizona, 1928, and reads as follows:

"The landlord shall have a lien on all the property of his tenant not exempt by law, placed upon or used on the leased premises until his rent is paid, such lien, however, shall not secure the payment of rent ensuing after the death or bankruptcy of the lessee or after an assignment for the benefit of lessee's creditors, and such landlord may seize, for rent, any personal property of his tenant found on the premises, but the property of any other person, although found on the premises, shall not be liable. If the tenant



fail to allow the landlord to take possession of such property for the payment of rent, the landlord may reduce such property to his possession by action to recover possession, and may hold or sell the same for the purpose of paying said rent. \* \* \* and also for the faithful performance of the terms of the lease, and such lien shall continue for a period of six months after the expiration of the term for which the premises were leased. Where the premises are sub-let or the lease assigned, the landlord shall have the like lien against the sublessee or assignee as he has against the tenant and may enforce the same in like manner.”

That plaintiff has at all times, and does now claim the benefits of the lien given a landlord, as aforesaid.

#### IX.

That said Leo A. Madden, receiver aforesaid, on November 23, 1932, filed his petition in the above-entitled court and cause praying for an order permitting him to sell said stock of merchandise and fixtures and his interest in said leasehold, for the sum of \$2250.00, being the same grocery business of the defendant above referred to.

That on the same day, and without any notice of any kind to said Morris LaCofske, the owner of said premises and said leases aforesaid, or without any notice to your claimant with whom

said receiver had theretofore discussed matters regarding said receivership and said grocery business, an order was entered in said cause by the said above-entitled court permitting the sale of said stock of merchandise and fixtures and interest in said leasehold for the sum of \$2250.00 cash to Herman J. Schwartz and Jessie E. Schwartz; that said sale was consummated, and said receiver received said sum of money. [16]

#### X.

That on November 30, 1932, the receiver notified C. A. Lindeman at Los Angeles, California, the attorney for Morris LaCofske, that he, the receiver, had sold to Herman J. Schwartz the store at Yuma, and that said Schwartz took possession of said business as of November 16, 1932, and stated that all future demands must be made on said Herman J. Schwartz, said receiver at the time transmitting his check to Morris LaCofske for \$1021.75, being as and for unpaid rent due from said receiver to said Morris LaCofske, computing the same to November 15, 1932.

#### XI.

Your claimant, Leah Goldsmith, further avers that Morris LaCofske, the owner of said premises and leases aforesaid, is her father; that he lives in Los Angeles, State of California; that your petitioner lives in Yuma, Yuma County, Arizona, where said premises are situated; that neither her father nor she were advised with or consulted

about the sale of said merchandise and fixtures and leases to said Herman J. Schwartz by said receiver, or by anyone for him; that she now has a general Power of Attorney from her father, with instructions and authority to represent him in this proceeding.

## XII.

Your claimant further avers that said Herman J. Schwartz paid no rent for said leased premises from the time possession of said stock of merchandise and fixtures was given him by said receiver, and your claimant avers that sometime after business hours, on the evening of Saturday, the 3d of December, 1932, and during Sunday, the 4th day of December, 1932, and without the knowledge and consent of your claimant or her principal, said Herman J. Schwartz moved out all the merchandise and much of the movable fixtures used in connection with said grocery business conducted in said leased premises aforesaid, and the whereabouts of said merchandise and fixtures is unknown to your claimant.

## XIII.

Your claimant further avers that she notified said receiver, Leo A. Madden, promptly of what had occurred with regard to said premises and said [17] receiver disclaimed any further interest or responsibility in said matter.

## XIV.

Your claimant further avers that on January 7, 1933 she caused her present attorneys to send a

notice on behalf of the owner of said premises and leases aforesaid to said receiver by registered mail, which notice is in words and figures as follows:

“Phoenix, Arizona, January 7, 1933.

“Leo A. Madden, Federal Receiver in Equity,  
Piggly-Wiggly Yuma Company,  
110 North Sixth Street, Room #3,  
El Centro, California.

“Hickeox, Trude & Robertson, his attorneys,  
Rehkopf Building,  
El Centro, California.

“Fred Blair Townsend and C. A. Edwards, his  
attorneys,  
Luhrs Tower  
Phoenix, Arizona.

“Dear Sirs:

You and each of you are hereby advised that Herman J. Schwartz and Jessie Schwartz, husband and wife, to whom you sold at private sale without notice the store belonging to the Piggly-Wiggly Yuma Company Estate, situated in Yuma, Yuma County, Arizona, which sale was confirmed by the United States District Court for the District of Arizona on November 23, 1932, said sale conveying certain fixtures and merchandise which was covered by the landlord's lien of Morris C. LaCofske and Katie LaCofske, husband and wife, of Los Angeles, California, for which sale, and order confirming the same, carried with it the assignment to and assumption by said purchasers of the leases held by said Morris C. LaCofske and Katie LaCofske, as well as the duty to pay the rent provided in said leases beginning Novem-

ber 16, 1932, moved out of said premises come-time between the evening of Saturday, December 3, 1932 and Sunday, December 4, 1932, taking with them all of the merchandise in said premises, as well as all of the valuable, movable fixtures in said premises; that said Herman J. Schwartz and Jessie S. Schwartz, husband and wife, paid to the landlords no rent whatsoever, and moved out without the consent of the landlords.

“You are advised that the owner and landlord of said premises, of which Piggy-Wiggly Yuma Company, a corporation, was the lessee and liable for the carrying out of said leases, holds you, as receiver of said company, responsible for the rent due under said leases from November 16, 1932 to the end of the terms fixed in said leases; the owner and landlord also holds you responsible for the carrying out of the provisions of Paragraph C of the lease of February 18, 1924. [18]

“The premises have been left in a very bad condition, and they are being held subject to the order of yourself as receiver. We would appreciate a prompt adjustment of the matter.

“This notice is given you in addition to the verbal notice heretofore given you.

“Yours very truly,

MARKS & MARKS,

By (Signed) B. E. MARKS

Attorneys for Morris C. LaCofske  
and Katie LaCofske, husband and  
wife, owners and lessors.”

Which notice was received by said receiver; that said premises are still held by said landlord subject to the order of said receiver.

### XV.

Your claimant further avers that in the order appointing said Leo A. Madden as receiver in the above-entitled proceedings, it is provided among other things that:

“The receiver is hereby given a period of three months from the date hereof within which to arrive at a determination as to what contracts, including leases, of the defendant the receiver should affirm or disaffirm and within that time to make his election in that respect, the court reserves the right if so advised from time to time to extend or diminish the time so granted to the receiver within which to make such election.”

And in this behalf claimant avers that said receiver occupied said premises aforesaid and carried on and continued said grocery business in said premises from the date of his appointment in March, 1932 to the date of the sale to said Herman J. Schwartz on November 23, 1932, which sale was made to take effect as of November 16, 1932.

That said receiver did not disaffirm said leases aforesaid within the three-months' period given him in said Order of Appointment; that said time has not been extended by the Court; that said receiver affirmed said leases and continued in possession of

said premises divered by said leases long after said three-months' period, and paid the rent provided for in said leases to November 16, 1932.

#### XVI.

Your claimant further avers that under the terms of said leases [19] aforesaid, rents were and are due and payable monthly in advance.

#### XVII.

Your claimant further avers that since said leased premises were vacated by said Herman J. Schwartz, she has endeavored to secure a tenant for said premises, without success, and said premises are now vacant.

#### XVIII.

Your claimant further avers that there is due her under the terms of said leases aforesaid from said receiver, Leo A. Madden, the balance of rent on said premises for the month of November, 1932, and for the months of December, 1932, January, February and March, 1933, being the sum of \$1575.00.

#### XIX.

Your claimant further avers that under the provisions of Paragraph C of said lease of February 18, 1924, set out in Paragraph III above, she claims against said receiver, Leo A. Madden, and said estate, the sum of \$1120.05 for the reason that said Lessee Piggly Wiggly Yuma Company after going into possession of said leased premises made certain changes without the consent of the landlord in the interior and in the fronts of said premises, tearing

out certain partitions, which it will cost \$1120.05 to restore to the condition said premises were in when said lessee entered into possession of said premises.

WHEREFORE, your claimant prays for an Order as follows:

(a) Requiring the receiver, Leo A. Madden, to pay her forthwith the sum of \$1575.00, as and for accrued rent on said premises;

(b) For the sum of \$1120.05, as and for costs of restoring said premises to the condition they were in when lessee took possession, under the provisions of Paragraph C of the lease of February 18, 1924, which amount should be included in the lien of the claimant;

(c) To impress the fund realized and received by the receiver from the sale of the stock of merchandise and fixtures in said leased premises with a lien, as and for rent already accrued and to accrue. [20]

(d) That sufficient of the funds in the hands of the receiver be held as and for rent to accrue on said leased premises to satisfy the claim of claimant under said leases;

(e) For costs, and such other relief as in equity may be meet and proper.

LEAH GOLDSMITH

Claimant

MARKS & MARKS

Attorneys for Claimant

705 Title & Trust Building,

Phoenix, Arizona



State of Arizona  
County of Yuma—ss.

LEAH GOLDSMITH, being first duly sworn, on her oath deposes and says:

That she is the Petitioner and Claimant above named; that she has read the foregoing Petition and knows the contents thereof, and that the matters and things therein stated are true.

LEAH GOLDSMITH

Subscribed and sworn to before me this 6th day of March, 1933.

[Notarial Seal]

R. F. RUPP

Notary Public

My commission expires April 25, 1935.

Received copy of the within this 9th day of March, 1933.

TOWNSEND JENCKES & EDWARDS

Attorneys for Leo A. Madden, Federal Receiver in Equity Piggly-Wiggly Yuma Company, Defendant. [21]

[Endorsed]: Filed Mar 9, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

[22]

---

[Title of Court and Cause.]

STIPULATION SUBMITTING CLAIMANT'S  
PETITION ON BRIEFS TO BE FILED.

IT IS HEREBY STIPULATED AND  
AGREED by and between Messrs. Marks & Marks,

attorneys for Leah Goldsmith, Claimant, and Messrs. Townsend, Jenckes & Edwards, attorneys for Leo A. Madden, ancillary receiver herein, that the facts set forth in the verified petition of the above-named claimant, filed in the above-entitled matter on March 9, 1933, are true and correct.

It is further stipulated that the questions of law presented by said petition in said receivership proceedings shall be briefed to the Court, the attorneys for the claimant having ten days from the date hereof to file the opening brief, the attorneys for the Receiver to have ten days after service upon them of the opening brief to file their answering brief, and the attorneys for the claimant to have five days after service upon them of the answering brief to file a reply brief if they so desire.

Dated at Phoenix, Arizona, this 3d day of April, 1933.

MARKS & MARKS

Attorneys for Claimant

Leah Goldsmith

TOWNSEND, JENCKES & EDWARDS

Attorneys for Receiver

Leo A. Madden [23]

[Endorsed]: Filed Apr. 3, 1933. J. Lee Baker, Clerk United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

[24]

[Title of Court and Cause.]

ORDER FOR DECREE.

The defendant having stipulated to the facts recited in the petition of Morris LaCofske for the recovery of rent of premises occupied by the defendant, and submitted the matter on said facts;

The court finds in favor of the petitioner, Morris LaCofske, on all allegations of the complaint, save and except those recited in paragraph XIX, and as to the facts recited therein, the court finds in favor of the defendant;

That as to the liability for the payment of rent not yet accrued under the lease, and the amount thereof, the question is reserved to be determined by the court in the light of future conditions;

WHEREFORE, IT IS ORDERED that the petitioner prepare special findings of fact, conclusions of law and a decree in accordance herewith.

DATED THIS 28th day of June, 1933.

F. C. JACOBS,  
U. S. District Judge [25]

[Endorsed]: Filed Jun 28, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

[26]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW ON PETITION OF LEAH GOLD-  
SMITH, CLAIMANT, ON BEHALF OF  
MORRIS LaCOFSKE.

THIS MATTER coming on before the Hon. F. C. Jacobs, United States District Judge, upon the petition of LEAH GOLDSMITH, lien creditor and claimant, for order directing receiver; said petitioner appearing by Marks & Marks, of Phoenix, Arizona, her attorneys; and said Receiver by and through his attorneys, Townsend, Jenckes & Edwards, Esqs., of Phoenix, Arizona, having stipulated that the facts recited in the Petition are true and correct, and the parties having submitted the matter on said facts, and the Court having required the respective parties to file briefs in support of their respective positions, and said briefs having been filed, and the Court being now sufficiently advised in the premises, finds, on this 28th day of June, 1933, in favor of the petitioner, Morris LaCofske, on all of the allegations of the complaint, save and except those recited in Paragraph XIX and as to the facts recited therein the Court finds in favor of the defendant; the Court particularly and especially finds as follows:

I.

That ever since the 21st day of March, 1932, Leo A. Madden, has been, and now is, the duly appointed, qualified and legally acting receiver of the defendant, Piggly Wiggly Yuma Company, a corporation.

## II.

That among the assets which the said Leo A. Madden took possession of [27] as receiver of said Piggly Wiggly Yuma Company was a grocery business carried on by said Company in Yuma, Yuma County, Arizona, in a store building owned by said Morris LaCofske, which premises are described as—

“North eighteen (N18) feet six inches (6”) of Part F of Lot eight (8), Block fourteen (14), and the South Half (S1½) of the Pancrazi Building on Unit F of Lot eight (8), Block Fourteen (14), of the City of Yuma,”

which real estate was improved with a large store building, in which said grocery business, consisting of a large stock of merchandise and fixtures and equipment, was carried on.

## III.

That at the time said receiver took possession of said grocery business, there was in full force and effect two leases between the owner, Morris LaCofske, and the defendant covering the premises occupied by said defendant, one of said leases expiring July 1, 1934 and the other expiring on October 6, 1934; the total rent reserved being \$350.00 a month, payable monthly in advance.

## IV.

That in said lease the lessee agreed among other things:—

Paragraph C

“To keep the interior of the premises in good

order and condition, and surrender the same at the expiration of the term of this lease in like good order and condition as when taking possession thereof, ordinary wear and tear and casualties by fire, the elements acts of God, or the public enemies alone excepted.”

That it is further agreed in said lease as follows:

“And it is agreed that the lessee shall have the right to assign or transfer this lease, or underlease, or sublet a portion or the whole of said premises, provided that this shall not prejudice or effect any covenant or agreement of this lease, as aforesaid, it shall remain liable to the said lessors for full payment of the rent the same as if such assignment had not been made. “It is further mutually understood and agreed by and between the parties hereto that the terms of this lease is binding upon the heirs, executors, administrators and assigns of all parties, and that no waiver of any breach or of any covenants herein shall be construed as a waiver of the covenant itself or of any subsequent breach thereof.” [28]

#### V.

That said Leo A. Madden, receiver, continued to operate said grocery business in said leased premises and paid the rent to the owner up to and including the 15th day of November, 1932.

#### VI.

That on or about May 2, 1932, the said owner and landlord filed his claim for rents to the end of the

period provided in said leases, and included his claim arising under Paragraph C of said lease, in Finding IV above set out, with said receiver.

#### VII.

That said owner has at all times herein mentioned claimed and does claim the benefits of a lien given to the landlord under Paragraph 3671, R. S. A., 1913, and Paragraph 1958, R. C. A., 1928.

#### VIII.

That on November 23, 1932, Leo A. Madden, receiver, without notice to the landlord and under ex parte proceedings, sold the stock of merchandise and fixtures and interest in said leasehold for the sum of \$2250.00 cash, which sale was confirmed on the same day to be effective as of November 16, 1932.

#### IX.

That the buyer shortly after taking possession of said merchandise and fixtures, without notice to the landlord, without his consent and without paying any rent, moved out of said premises, taking everything movable with him; the landlord notifying the receiver promptly of the action of said purchaser.

#### X.

That the landlord has at all times held said premises subject to the order of the receiver; that said landlord has been diligent in claiming and protecting his rights; that he has endeavored to secure a tenant for said premises, without success.

## XI.

That in the order appointing said Leo A. Madden as receiver in the above-entitled proceedings, it is provided among other things that— [29]

“The receiver is hereby given a period of three months from the date hereof within which to arrive at a determination as to what contracts, including leases, of the defendant the receiver should affirm or disaffirm and within that time to make his election in that respect, the court reserves the right if so advised from time to time to extend or diminish the time so granted to the receiver within which to make such election.”

That said receiver occupied said premises aforesaid and carried on and continued said grocery business in said premises from the date of his appointment in March, 1932 to the date of the sale on November 23, 1932, which sale was made to take effect as of November 16, 1932.

That said receiver did not disaffirm said leases aforesaid within the three-months' period given him in said Order of Appointment; that said time has not been extended by the Court; that said receiver affirmed said leases and continued in possession of said premises covered by said leases after said three-months' period, and paid the rent provided for in said leases to November 16, 1932.

## XII.

That there is due claimant under the terms of said



leases aforesaid from said receiver, Leo A. Madden, the balance of rent on said premises for the month of November, 1932, and for the months of December, 1932, January, February and March, 1933, being the sum of \$1575.00.

### XIII.

That the landlord is not entitled to recover anything from said receiver under Paragraph C of said lease in Finding IV above set out.

### XIV.

The court further finds that, since the filing of said petition on March 9, 1933, said premises have not been rented by claimant, landlord and owner of said premises, nor by the receiver, Leo A. Madden, and that there has accrued rents, since the filing of said petition to this date, to-wit: for the months of April, May, June and July, 1933, at the rate of \$350.00 a month as provided in said leases, or a total of \$1400.00.

From the foregoing Findings of Fact, the Court draws the following CONCLUSIONS OF LAW:

[30]

1. That the owner of said premises and landlord had a lien under the provisions of the statutes of Arizona for the entire term of said leases upon all of the property of his tenant placed upon or used on the leased premises until his rent is paid.

2. That the receiver, Leo A. Madden, affirmed the leases, which were in effect at the time of his appointment as receiver in the above-entitled proceedings, between the owner of said premises, Morris

LaCofske, and the defendant, Piggly Wiggly Yuma Company, a corporation.

3. That by the sale of the property situated in the leased premises to a third person, the receiver, Leo A. Madden, did not relieve himself of the duty and obligation to pay the rent to the landlord provided for in said leases.

4. That the owner and landlord, Morris LaCofske, has been diligent in all things connected with said leases, and has been diligent in presenting his claim to the receiver.

5. That the owner and landlord, Morris LaCofske, is entitled to recover from Leo A. Madden, receiver of the Piggly Wiggly Yuma Company, a corporation, defendant, the sum of \$1575.00 forthwith, as and for rent due on said premises up to the time of the filing of the petition in March, 1933.

6. That the owner and landlord, Morris LaCofske, is entitled to recover from Leo A. Madden, receiver of the Piggly Wiggly Yuma Company, a corporation, defendant, the sum of \$1400.00, as and for rent accrued since the filing of said petition to and including the month of July, 1933.

7. That the owner and landlord, Morris LaCofske, is entitled to a first lien upon the funds realized and received by said receiver, Leo A. Madden, from the sale of the stock of merchandise and fixtures in said leased premises for the sums herein set out, and that payment of said amounts shall be made by said receiver forthwith.

8. That if the funds in the hands of the receiver,

Leo A. Madden, realized and received from the sale of the stock of merchandise and fixtures in said leased premises be not sufficient to pay the amounts herein set forth, that the receiver use such other funds as he may have for said purpose. [31]

9. That the claimant, Morris LaCofske, is entitled to recover his costs herein incurred, to be taxed and allowed as provided by law.

10. The Court further finds and holds that as to the liability for the payment of rent not yet accrued under the leases, and the amount thereof, the question is reserved to be determined by the court in the light of future conditions.

Dated at Prescott, Arizona, this 18th day of July, 1933.

F. C. JACOBS

United States District Judge

Received copy of the within this 14th day of July, 1933.

TOWNSEND, JENCKES & EDWARDS  
& CHAS. B. WARD

Attorneys for Leo A. Madden, Receiver

[Endorsed]: Filed Jul 18, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk. [32]

In the District Court of the United States in and  
for the District of Arizona.

NO. E-244-Phoenix

CRAMER'S BAKERY, INC., Ltd., a corporation;  
IMPERIAL VALLEY MILK PRODUCERS AS-  
SOCIATION, a corporation;  
VALLEY WHOLESALE MEAT COMPANY, a  
corporation; and  
HAROLD W. HERLIHY, as Receiver of U-SAVE  
HOLDING CORPORATION, a corporation  
Plaintiffs

vs.

PIGGLY WIGGLY YUMA COMPANY, a cor-  
poration  
Defendant

DECREE.

THE COURT having heretofore, on the.....  
day of July, 1933, signed and filed its Findings of  
Fact and Conclusions of Law in said above-entitled  
proceedings;

IT IS NOW, BY THE COURT, ORDERED,  
ADJUDGED AND DECREED that MORRIS  
LaCOFSKE had and has a lien under the pro-  
visions of the Statutes of Arizona for the entire  
term of the leases between said Morris LaCofske, as  
owner, and the defendant, Piggly Wiggly Yuma  
Company, a corporation, as tenant, on the property  
of said tenant, placed upon or used on the leased  
premises by said tenant, one of which leases expires  
June 1, 1934, and one of which leases expires on

October 6, 1934, at the total rent of \$350.00 per month.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, defendant, affirmed said leases and that he did not relieve himself of the liability provided for in said leases by an assignment of said leases; that the said Morris LaCofske has been diligent in pressing his claim for rent to said Receiver; that said Receiver has paid rent on said premises to November 16, 1932.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Morris LaCofske do have and recover judgment against Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, defendant, for the sum of ONE THOUSAND FIVE HUNDRED AND [33] SEVENTY-FIVE DOLLARS (\$1,575.00), being rent to and including the month of March, 1933, and that payment of said sum be made forthwith, that said amount carry interest at six per cent (6%) per annum from this date until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Morris LaCofske do have and recover judgment against Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, defendant, for the sum of ONE THOUSAND FOUR HUNDRED DOLLARS (\$1,400.00), being rent from April, 1933 to and including July, 1933, and that payment of said sum be made forthwith, that said amount carry interest at six per cent (6%) per annum from this date until paid.

That the foregoing judgment of Two thousand Nine Hundred and Seventy-five dollars (\$2,975.00), together with interest as herein provided, is a first lien on the amount realized by the Receiver from the sale of said merchandise and fixtures placed upon and used in said leased premises, and that payment shall be made out of said moneys, and the balance out of any other moneys coming into the hands of said Leo A. Madden, Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Morris LaCofske do have and recover judgment from the said Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, defendant, for his costs herein incurred, taxed and allowed at \$ .

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Morris LaCofske do have and recover nothing from the said Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, defendant, as and for restoring said premises under Paragraph C of said lease of February 18, 1924.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the liability for the payment of rent not yet accrued under the leases, and the amount thereof, the question is reserved to be determined by the court in the light of future conditions.

DATED AT PRESCOTT, ARIZONA, this 18th day of July, 1933.

F. C. JACOBS

United States District Judge [34]

Received copy of the within this 8th day of July, 1933.

FRED BLAIR TOWNSEND, C. A. EDWARDS  
& CHARLES B. WARD

Attorneys for Receiver, Leo A. Madden.

[Endorsed]: Filed Jul 18, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

————— [35]

[Title of Court and Cause.]

PETITION FOR APPEAL.

TO THE HONORABLE F. C. JACOBS, JUDGE  
OF THE DISTRICT COURT OF THE  
UNITED STATES, IN AND FOR THE DIS-  
TRICT OF ARIZONA:

LEO A. MADDEN, Ancillary Receiver in the above-entitled cause, considering himself aggrieved by the decree made and entered in said cause on the 18th day of July, 1933, prays that he may be permitted to take an appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith.

And your petitioner desires that said appeal shall operate as a supersedeas, and therefore prays that an order be made fixing the amount of security which said Leo A. Madden shall give and furnish upon such appeal, and that upon giving such security all further proceedings in this court be sus-

pendent and stayed until the determination of said appeal by the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated August 9th, 1933.

TOWNSEND, JENCKES & EDWARDS

Attorneys for Leo A. Madden [36]

Received copy of Petition for Appeal this 11th day of August, 1933.

MARKS & MARKS

By B. E. MARKS

Attorneys for Morris LaCofske

[Endorsed]: Filed Aug. 14, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

[37]

[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

COMES NOW, Leo A. Madden, Ancillary Receiver in the above-entitled cause, and files the following Assignment of Errors upon which he will rely in the prosecution of the appeal herewith petitioned for in said cause, from the decree of this court entered on the 18th day of July, 1933.

1. The court erred in holding that the appellant, Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, did not relieve himself of the liability provided for in the leases described in said decree by assigning said leases.

2. The court erred in ordering judgment against Leo A. Madden, Receiver of Piggly Wiggly Yuma



Company, a corporation, in the sum of One Thousand Five Hundred Seventy-Five and No/100 (\$1,575.00), as for rent to and including the month of March, 1933, together with interest thereon at 6% per annum from the date of said decree.

3. The court erred in ordering judgment against Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a cor- [38] poration, in the sum of One Thousand Four Hundred and No/100 (\$1,400.00) Dollars, as for rent from April, 1933, to and including July, 1933, together with interest thereon at 6% per annum from the date of said decree.

4. The court erred in ordering that the total amount of said judgment, to-wit: \$2,975.00, together with interest as therein provided, is a first lien on the amount realized by the said Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, from the sale of merchandise and fixtures placed upon and used in said premises.

5. The court erred in ordering that payment of the total amount of said judgment should be made out of the moneys realized by said Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, as aforesaid.

6. The court erred in ordering that payment of the balance remaining on said judgment of Two Thousand Nine Hundred Seventy-Five and No/100 (\$2975.00) after application of the amount realized by said Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, from the sale of merchandise and fixtures placed upon or used in said premises, should be made out of any other

moneys coming into the hands of said Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation.

7. The court erred in ordering that said Morris LaCofske recover judgment against Leo A. Madden, Receiver of Piggly Wiggly Yuma Company, a corporation, for his costs incurred herein.

8. The court erred in ordering that as to the liability for the payment of rent not yet accrued in said leases, and the amount thereof, the question should be reserved to be determined by the court in the light of future conditions. [39]

WHEREFORE, Leo A. Madden, Ancillary Receiver in the above-entitled cause, and appellant herein, prays that the said decree may be reversed, and for such other and further relief as to the court may seem just and proper.

Dated August 9th, 1933.

TOWNSEND, JENCKES & EDWARDS  
Attorneys for Appellant.

RECEIVED copy of foregoing Assignment of errors this 11th day of August, 1933.

MARKS & MARKS

By B. E. MARKS

Attorneys for Morris LaCofske.

[Endorsed]: Filed Aug. 14, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk. [40]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL, WITH  
SUPERSEDEAS.

The petition of Leo A. Madden, Ancillary Receiver in the above-entitled cause, for an appeal from the decree of this court entered on the 18th day of July, 1933, is hereby granted and the appeal is allowed; and upon petitioner filing a bond in the sum of Three thousand five hundred dollars, with sufficient sureties, and conditioned as required by law, the same shall operate as a supersedeas of the decree made and entered in the above cause on the date aforesaid, and shall suspend and stay all further proceedings in this court until the determination of said appeal by the United States Circuit of Appeals for the Ninth Circuit.

Dated August 14th, 1933.

F. C. JACOBS

District Judge. [41]

Received copy of above order this 15th day of August, 1933.

MARKS & MARKS

B. E. MARKS

Attorneys for Appellee

[Endorsed]: Filed Aug. 28, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk. [42]

[Title of Court and Cause.]

SUPERSEDEAS AND COST BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, LEO A. MADDEN, ancillary receiver of Piggly Wiggly Yuma Company, a corporation, as principal, and AMERICAN SURETY COMPANY OF NEW YORK, a corporation, as surety, are held and firmly bound unto Morris LaCofske in the full and just sum of THIRTY-FIVE HUNDRED AND NO/100 DOLLARS (\$3500.00) to be paid to the said Morris LaCofske, his heirs, executors, administrators, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

SEALED WITH OUR SEALS and dated this 5th day of September, 1933.

WHEREAS, lately to-wit: on the 18th day of July, 1933, in an equity proceeding in the District Court of the United States in and for the District of Arizona, wherein the said Morris LaCofske filed his petition in the above entitled Court and cause for an order directing the said receiver, LEO A. MADDEN, to pay over certain moneys to the said Morris LaCofske, a decree was rendered in favor of the said LaCofske, and against the said LEO A. MADDEN, ancillary receiver, allowing said petition in part, and the said LEO A. MADDEN, ancillary receiver, having obtained [43] leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a citation has been issued, directed to the said Morris LaCofske citing

him to appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, thirty (30) days from and after the date of such citation.

NOW THE CONDITION of the above obligation is such that, if the said LEO A. MADDEN, ancillary receiver, shall prosecute said appeal to effect, and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

LEO A. MADDEN

Ancillary Receiver of Piggly Wiggly  
Yuma Company, a corporation,

Principal

AMERICAN SURETY COMPANY

OF NEW YORK

[Seal]

Surety

By FRED BLAIR TOWNSEND

Resident Vice-President

By W. K. JAMES

Resident Ass't Secretary

United States of America

State of California

County of Imperial—ss.

Before me, the undersigned authority, on this day personally appeared LEO A. MADDEN, known to me to be the person whose name is subscribed to the foregoing instrument as ancillary receiver of Piggly Wiggly Yuma Company, a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF  
OFFICE this 5th day of September, 1933.

[Seal]

LYMAN B. ROBERTSON

Notary Public.

My commission expires 1/16/1935. [44]

United States of America

State of Arizona

County of Maricopa—ss.

Before me, the undersigned authority, on this day personally appeared FRED BLAIR TOWNSEND and W. K. JAMES, known to me to be the persons whose names are subscribed to the foregoing instrument as Resident Vice-President and Resident.....Secretary of AMERICAN SURETY COMPANY OF NEW YORK, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF  
OFFICE this 9th day of October, 1933.

[Seal]

MARTHA P. FLETCHER

Notary Public

My commission expires Jan. 18, 1935.

APPROVED October 12th, 1933.

HON. F. C. JACOBS

Judge District Court of the United  
States in and for the District of  
Arizona.

[Endorsed]: Filed Oct. 12, 1933. J. Lee Baker,  
Clerk, United States District Court for the District  
of Arizona. By George A. Hillier, Deputy Clerk. [45]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.  
TO THE CLERK OF THE ABOVE COURT:

You are hereby requested to make a transcript of record, to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, and no other, papers and exhibits, to-wit:

1. Petition for order authorizing sale of property—Dated November 22, 1932;
2. Order authorizing sale of property—Dated November 23rd, 1932;
3. Petition of Leah Goldsmith, lien creditor and claimant, for order directing receiver—Filed March 9th, 1933;
4. Stipulation—Dated April 3rd, 1933;
5. Order for decree—Dated June 28th, 1933;
6. Findings of fact and conclusions of law on petition of Leah Goldsmith, claimant, on behalf of Morris LaCofske—Dated July 18th, 1933;
7. Decree—Dated July 18th, 1933;
8. Petition for appeal—Dated August 9th, 1933—Filed August 14th, 1933;
9. Order allowing appeal, with supersedeas—Dated August 14th, 1933; [46]
10. Assignment of errors—filed August 14th, 1933;
11. Citation on appeal—Dated August 14th, 1933;
12. Order extending time for filing transcript of record on appeal—Dated September 9th, 1933;  
and

13. Supersedeas and Cost Bond;
14. This praecipe and service thereon.

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals, for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, on or before the 14th day of October, 1933, pursuant to the order of this Court enlarging and extending said time.

Dated September 26th, 1933.

TOWNSEND, JENCKES & EDWARDS  
Attorneys for Appellant.

Service of this praecipe accepted and acknowledged this 29th day of September, 1933.

MARKS & MARKS      mm  
Attorneys for Appellee.

[Endorsed]: Filed Oct. 7, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

————— [47]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR FILING  
TRANSCRIPT OF RECORD ON APPEAL.  
TO THE HONORABLE F. C. JACOBS, JUDGE  
OF THE DISTRICT COURT OF THE  
UNITED STATES, IN AND FOR THE  
DISTRICT OF ARIZONA:

IT IS ORDERED that the time for filing the



transcript of record on appeal in the above entitled cause is hereby extended to not later than the 14th day of October, 1933.

DATED this 9th day of September, 1933.

F. C. JACOBS,

Judge of the United States District Court, in and for the District of Arizona.

[Endorsed]: Filed Sep 9, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

————— [48]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
RECORD AND PERFECT APPEAL.

For good cause shown, it is hereby

ORDERED that the time in which Leo A. Mad-den, appellant herein, may docket the record in the Circuit Court of Appeals of the United States, in and for the Ninth Circuit, and perfect his appeal from the decree entered in this Court on July 18th, 1933, be, and the same hereby is, extended to the 14th day of November, 1933.

DATED this 12th day of October, 1933.

F. C. JACOBS,

District Judge.

[Endorsed]: Filed Oct. 12, 1933. J. Lee Baker, Clerk, United States District Court for the District of Arizona. By George A. Hillier, Deputy Clerk.

[49]

[Title of Court.]

United States of America

District of Arizona—ss.

I, J. Lee Baker, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Cramer's Bakery Inc. Ltd., a corporation; Imperial Valley Milk Producers Association, a corporation; Valley Wholesale Meat Company, a corporation, and Harold W. Herlihy as Receiver of U Save Holding Corporation, a corporation, Plaintiffs, versus Piggly Wiggly Yuma Company, a corporation, Defendant, numbered E-244-Phoenix on the docket of said Court.

I further certify that the attached pages, numbered 1 to 53, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$6.50 and that said

sum has been paid to me by counsel for the appellant.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

WITNESS my hand and the Seal of the said Court this 7th day of November, 1933.

[Seal]

J. LEE BAKER,

Clerk. [50]

---

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America—ss.

To MORRIS LaCOFSKE, Appellee:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within Thirty (30) days from the date hereof, pursuant to an order allowing an appeal from the District Court of the United States for the District of Arizona, in a suit wherein Leo A. Madden, Ancillary Receiver in the above-entitled action, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against said appellant should not be corrected, and why speedy justice should not be done to the parties on that behalf.

Witness the Honorable F. C. Jacobs, Judge of the District Court of the United States, this 14th day of August, 1933, and in the 158th year of the

independence of the United States of America.

.....  
Clerk.

[Seal]

F. C. JACOBS,

Judge of the District Court  
for the District of Arizona.

SERVICE of a copy of the foregoing citation is  
acknowledged [51] this 15th day of August, 1933.

MARKS & MARKS

B. E. MARKS

Attorneys for Appellee. [52]

[Endorsed]: Filed Aug. 28, 1933. J. Lee Baker,  
Clerk, United States District Court for the District  
of Arizona. By George A. Hillier, Deputy Clerk.

[53]

-----  
[Endorsed]: No. 7322. United States Circuit  
Court of Appeals for the Ninth Circuit. Leo A.  
Madden, Ancillary Receiver of Piggly Wiggly  
Yuma Company, a corporation, Appellant, vs. Mor-  
ris LaCofske, Appellee. Transcript of Record  
Upon Appeal from the District Court of the United  
States for the District of Arizona.

Filed November 9, 1933.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.